

Dijo Mathew and Ors. Vs.insurance Regulatory and Development Authority of India

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Court : Delhi

Decided On : Apr-03-2018

Appellant : Dijo Mathew and Ors.

Respondent : Insurance Regulatory and Development Authority of India

Advocate for Pet/Ap. : Mr. Azeem Samuel, Mr. Akhil Kulshrestha, Mr. Dipak K. Nag, Ms. Rajdipa Behura, Mr. Philomon Kani, Ms. Kriti Handa, Ms. Hansika Sahu, Ms. Damini K

Judgement :

\$~10 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

3. 4.2018 31080/2016 DIJO MATHEW AND ORS + W.P.(C) 3165/2016 & CM Nos. 13551/2016, 18461/2016, INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA versus Through : Mr Azeem Samuel, Mr Akhil Kulshrestha, Advs. Respondent

... Petitioner

s Through : Mr. Dipak K. Nag, Adv. for Respt. Ms. Rajdipa Behura, SPP for CBI with Mr. Philomon Kani, Ms. Kriti Handa, Ms. Hansika Sahu and Ms. Damini K., Adv. CORAM: HON'BLE MR. JUSTICE RAJIV SHAKDHER % RAJIV SHAKDHER, J.

(ORAL) 1. This writ petition is directed against the order dated 12.02.2016, issued by the Insurance Regulatory and Development Authority of India (in short IRDA).

2. To be noted, there are four petitioners who are arrayed as parties to the instant writ petition. I am informed that petitioner Nos.1 to 3 are employees of petitioner No.4, which is a proprietorship concern of Mr. Sanjeev Soni. Therefore, in effect, it is petitioner No.4, who, via its authorized representative (petitioner No.1), seeks to impugn the order dated 12.02.2016.

3. The record shows that Mr. Sanjeev Soni is a licenced surveyor who was mandated to assess the loss suffered by an entity known as North India Coating Private Limited (in short NICPL). The pivotal force behind NICPL is a gentleman known as Mr. Jha. Mr. Jha, I am W.P.(C) 3165/2016 Page 1 of 5 told, is the Director of NICPL.

4. The record further shows that NICPL had preferred a claim of Rs.4,26,16,292.83 crores with United India Insurance Company.

5.

... Petitioner

No.4 was, thus, tasked with the job of assessing the loss.

6. It appears that petitioner No.1 filed a report dated 13.03.2006. Via this report, petitioner No.4 indicated to the aforementioned Insurance Company that the loss claimed by NICPL was on the higher side. In the assessment of petitioner No.4 the loss could be quantified at Rs. 1,38,32,240.59.

7. It is not disputed before me by the counsel for the respondents which includes IRDA as well as Central Bureau of Investigation (in short CBI) that a case was registered against the surveyors which included, one, Mr. Munish Parashar. 7.1 Mr. Munish Parashar qua the insurance claim lodged by NICPL, had justified a loss to the tune of Rs. 3.41 crores. 7.2 Consequently, CBI, after carrying out investigations proceeded to lodge charge sheets in which Mr. Jha, Director, NICPL along with Mr. Munish Parashar were arrayed as accused.

8. What is not disputed before me is that Mr. Sanjeev Soni is not an accused in any of the charge sheets filed by CBI. It is also not disputed before me by the learned counsel for CBI that Mr. Sanjeev Soni, in fact, is shown as a witness in the charge sheet filed by CBI. However, it transpires that CBI did recommend to IRDA that the licence of both Mr. Munish Parashar, who, as indicated above, was arrayed as an accused as well as Mr. Sanjeev Soni, should be cancelled.

9. It is because of this recommendation that IRDA issued a show cause notice to Mr. Sanjeev Soni, the proprietor of petitioner No.4, which culminated in the passing of the impugned order dated 12.02.2016. 9.1 The operative directions which are issued by IRDA via the W.P.(C) 3165/2016 Page 2 of 5 impugned order are set forth hereafter: On a careful perusal of the CBI Report dated 16.02.2015, the submission made by Shri Sanjeev Soni in various written communications as well as his oral submission made during the hearing dated 19.10.2015, the Authority is of the opinion that even though the surveyor claimed that the assessment report was based on Reinstatement value, he should have exercised due diligence in verification of the bills to check their genuineness before giving final recommendation. Surveyor has to carry out his professional work with due diligence, care and skill and with proper regard to technical and professional standards as stipulated in Regulation 15(7) of the Regulations, which he failed to comply. Therefore Shri Sanjeev Soni, Surveyor hereby warned for the aforesaid non-compliance and advised to exercise due care in future dealings. However, the Authority reserves its right to take any other regulatory action as deemed necessary, in case Shri Sanjeev Soni is found guilty by the Honble court in the case filed/to be filed by CBI in the matter. 10. The petitioner, being aggrieved, has preferred the instant writ petition. Mr. Nag, who appears for IRDA, as indicated above, has fairly admitted that Mr. Sanjeev Soni is not arrayed as an accused in any of the charge sheets. Ms. Rajdipa Behura, who appears for CBI, affirms this position, which is also a fact noted above by me. It is also not in dispute that Mr. Sanjeev Soni had scaled down the claim made by NICPL from Rs. 4.26 crores to Rs. 1,38,32,240.59 and that the report of Mr. Sanjeev Soni/petitioner No.4 did indicate that the claim of NICPL was on the higher side.

11. Learned counsel for the petitioners has taken me through the report, in particular, that part of the report which shows the documents on which reliance was placed while assessing the claim lodged by NICPL. Particular emphasis was placed by the counsel for the petitioner, apart from anything else, on the fact that in assessing the worth of NICPLs claim reliance was placed on its audited balance sheets for previous three years. W.P.(C) 3165/2016 Page 3 of 5 12. Learned counsel, thus, says that given the scope of the work with which Mr. Sanjeev Soni/petitioner No.4 was tasked, the conclusion reached by IRDA was unfair and was not called for in the facts and circumstances of the instant case.

13. According to the learned counsel for the petitioners, the matter requires re-examination. 13.1 The submission of the learned counsel for the petitioners is that there has been no independent application of mind by IRDA, IRDA has merely gone by the recommendation of CBI.

14. I tend to agree with the submissions made by the learned counsel for the petitioners. IRDA, in my view, needed to discuss the scope of the work and the responsibility placed on Mr. Sanjeev Soni/petitioner No.4 having regard to the mandate given to him. The infraction, if any, committed by Mr. Sanjeev Soni/petitioner No.4 in making inquiries and/or investigations while evaluating the causes and the circumstances in which loss was said to have incurred by NICP needed to be clearly brought out. Flaws, if any, in the evaluation and quantification of loss was required to be delineated. IRDA also needed to point out as to whether it was incumbent upon Mr. Sanjeev Soni/petitioner No.4 to interface with third parties who were related to NICPL, which included its vendors and bankers. 14.1 According to the learned counsel for the petitioners Mr. Sanjeev Soni/petitioner No.4 had done all that which was within his remit in evaluating the insurance claim lodged by NICPL. 14.2 As noted above, the report of Mr. Sanjeev Soni/petitioner No.4 did indicate that the claim made by NICPL was on the higher side.

15. Therefore, IRDA, in my view, would have to revisit the matter and pass a fresh order after hearing Mr. Sanjeev Soni/petitioner No.4. Therefore, IRDA is directed to re-hear Mr. Sanjeev Soni/petitioner No.4. While doing so, it will bear in mind that it would not visit Mr. Sanjeev Soni/petitioner No.4 with a penalty higher than that is

W.P.(C) 3165/2016 Page 4 of 5 indicated in the impugned order, as he cannot be put in a worse position than he is placed in by virtue of the impugned order.

16. Furthermore, counsel for the petitioners submits before me that Mr. Sanjeev Soni/petitioner No.4 is affected by the fact that the impugned order has been uploaded on the website of IRDA. It is the learned counsels submission that pending re-hearing in the matter, IRDA should upload the information that the matter is under re- examination. 16.1 I find merit in this submission. IRDA is directed to upload the information with regard to the fact that the matter is being re-examined at the behest of this Court.

17. Thus, the writ petition is disposed of with a direction to IRDA to re-examine the matter bearing in mind the observations made hereinabove. A notice will issue to Mr. Sanjeev Soni/petitioner No.4 indicating the date, time and venue where he would be required to for present himself for making his representation with regard to the issue at hand. IRDA will also permit Mr. Sanjeev Soni/petitioner No.4 to file written submissions and/or additional documents, if he so chooses, in support of his case. IRDA will, thereafter, pass a speaking order; a copy of which will be furnished to Mr. Sanjeev Soni/petitioner No.4.

18. In case Mr. Sanjeev Soni/petitioner No.4 is aggrieved by the order passed by IRDA, he will be at liberty to assail the same in a manner known to law.

19. Consequently, pending applications stand closed. No costs. APRIL03 2018
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